



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 31, 1957

Hon. Joe Nelson, Director
Board of County and District
Road Indebtedness
100 Highway Building
Austin, Texas

Opinion No. WW-206

Re: Concerning the warrants
that are eligible for
payment under the Bond
Assumption Act and are
being paid out of the
County Lateral Road
Account.

Dear Mr. Nelson:

On May 16, 1957, the Commissioners' Court of Duval County entered an order declaring that the Duval County Special Road Refunding Warrants of 1949 heretofore issued in the amount of \$140,000 were null, void and illegal and notified the Board of County and District Road Indebtedness that the county would refuse to pay the warrants and the interest thereon.

The questions you have presented are as follows:

1. We have funds on deposit with the State Treasurer in the Coupon Paying Account for coupons which have matured and have not been presented for payment. Please advise us if we should stop all payments from this Account.
2. Duval County has funds deposited with us for the Sinking Fund of this issue. Please advise if these funds could be returned to Duval County or should they be held until this matter has been settled in Court.
3. Article 6674Q-7, Paragraph H, of the Revised Civil Statutes, require us to set aside each year from the Lateral Road Account money with which to pay the maturing warrants and interest of this issue. Please advise us if we should continue

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annually to set aside funds from the Lateral Road Account for the payment of the maturing warrants and coupons of this issue.

Each of your questions assumes that the refunding warrants are in fact void, but the unilateral action of the issuing agency in declaring the obligations of no force and effect does not necessarily have that effect.

On January 10, 1949, the minutes of the Commissioners' Court (Volum H, page 281-284) show that the Commissioners' Court purportedly adopted an order authorizing the refunding of \$50,000 Duval County Road and Bridge Warrants, Series A, dated December 15, 1938, and \$90,000 Duval County Road and Bridge Warrants, dated December 15, 1938. These warrants were refunded into the Duval County Special Road Refunding Warrants whose validity is now questioned by the Commissioners' Court of Duval County.

It is elemental that a county may issue time warrants for the purpose of making authorized expenditures, but such instruments are non-negotiable and subject to all of the defenses held by the debtor. Adams v. McGill, 146 S.W. 2d 332 (Tex. Civ.All., 1940) error ref. San Patricio County v. McClane, 44 Tex. 392 (1876). Robertson v. Breedlove, 61 Tex. 316 (1884).

Section 7 of Article 2368(a) is the statute which authorizes the refunding of warrants issued by a county, and reads, in part, as follows:

"The Commissioners' Court of any county . . . may pass all necessary orders . . . to provide for funding or refunding the whole or any part of any legal debt of such county . . . by cancelling evidences thereof and issuing to the holders or creditors, notes, bonds, or treasury warrants . . ."

The statute then prescribes the procedure for the issuance of refunding bonds, and permits the issuance of notes or treasury warrants to refund legal debts which were outstanding prior to the effective date of the Act (1931), and then provides:

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"After this Act becomes effective, no item of indebtedness thereafter issued, except bonds and matured coupons thereon and except items of indebtedness to be issued under contracts made before this law becomes effective, shall be funded or refunded except in the manner hereinafter in this subsection prescribed, to-wit: . . ." (Emphasis supplied)

The statute then permits the issuance of refunding bonds, after notice of intention has been published if no referendum petition has been presented.

Section 9 declares that any warrants, bonds or notes not issued in conformity with the Act shall be void and permits any taxpayer to enjoin the payment of the obligation.

An examination of the order authorizing the refunding of the warrants into more warrants demonstrates the patent illegality of the refunding warrants for the failure to comply with the provisions of Section 7 of Article 2368(a) in that no notice was given of the intention to issue refunding bonds (and warrants rather than bonds were issued) and there was no opportunity for the submission to the electorate as required by that statute.

Accordingly, you are respectfully advised that the Duval County Special Road and Bridge Warrants of 1949 are in fact void.

The courts have repeatedly held that the refunding of obligations does not create a new debt against the issuing agency since the effect of such operation is to merely change the nature and characteristics of an existing obligation. City of Waco v. Mann, 133 Tex. 163, 127 S.W. 2d 879 (1939); Kansas City Life Ins. Co. v. Evangeline Parish School Board, 58 F.S. 39. See the cases collected in 15 McQuillin Municipal Corporations, Section 43.12.

This being true, the holders of the refunding warrants would be subrogated to the rights and privileges possessed by the holders of the original warrants sought to be refunded. (Section VIII of the order authorizing the refunding warrants expressly reserved the right of subrogation). We have requested, but have not been able to obtain, copies of the original orders

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of the Commissioners' Court whereby the original warrants were issued in 1938, and, accordingly, we are not in a position to advise you as to whether the county complied with the provisions of Article 2368(a), V.C.S., in the issuance of such warrants.

In the light of the above facts, you are respectfully advised that no further payments should be made from the interest and sinking fund to the payment of any of the warrants or interest thereon until the legality of the warrants has been established by a judicial proceeding, and you are further advised that no funds should be returned to Duval County, and that you should continue to set aside funds for the payment of the warrants and coupons from the Lateral Fund Account as authorized by Article 6674(q), paragraph H, V.C.S.

By following this procedure, the rights of the taxpayers, the county and the warrant holders will be preserved until such time as the orders of the Commissioners' Court may be located and a decision rendered by a court of competent jurisdiction.

SUMMARY

The Duval County Special Road Refunding Warrants of 1949 were not issued in conformity with the provisions of Article 2368(a), V.C.S., and are, therefore, void. The holders of the warrants are subrogated to the rights of the holders of the original warrants, but the validity of those warrants can not be determined by this office without an examination of the orders authorizing their issuance. Moneys now in the sinking fund pertaining to such refunding warrants should be held intact by the Board of County and District Road Indebtedness and payments into the fund should be continued under Article 6674(q),

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paragraph H, V.C.S., until such time as the rights of the taxpayers, warrant holders, and the county have been adjudicated.

Very truly yours,

WILL WILSON
Attorney General

Edmund M. Morand

By

Assistant

APPROVED:

OPINION COMMITTEE:

H. Grady Chandler, Chairman

J. C. Davis, Jr.

Fred Werkenthin

Grundy Williams

REVIEWED FOR THE ATTORNEY

By: Geo. P. Blackburn